HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.391 OF 2003
AND
CRL.M.P.Nos.169 & 170 OF 2003.

C.Natarajan ... Petitioner

-Vs-

P.Kathirvel ... Respondent

Petition filed under Section 482 of the Criminal Procedure Code, praying for the relief as stated therein.

!For petitioner : Mr.V.Padmanaban

^For respondent : Mr.K.Thambi

:O R D E R

This petition has been filed praying to call for the records in C. C.No.9600 of 2002 on the file of the Court of XIII Metropolitan Magistrate, Egmore, Chennai, and quash the same.

2. On a perusal of the materials placed on record, it comes to be known that the petitioner is the Principal of the Presidency College, Chennai while the respondent is the Lecturer in the Department of Economics of the same college and the respondent lodged a private complaint as against the petitioner in C.C.No.9600 of 2002 on the file of the Court of XIII Metropolitan Magistrate, Egmore, Chennai for the alleged offence punishable under Section 500 IPC on allegation that even though he is the Senior in the Department of Economics of the College, when the Head of the Department one Mrs.T.Suganya Bai went on leave, the accused/Principal with ulterior and sinister motives, orally directed one L.Venkatasamy to be in-charge of the Department, who is junior to the complainant.

3. It is further alleged that when the complainant along with several other responsible teachers questioned the accused about the irregularity committed by him, the accused abused the complainant in the presence of those teachers uttering that an FIR is pending against him and hence he was not eligible to claim the position of the Head of the Department

of Economics (in-charge) thus putting the complainant to shock and surprise and to shame in the presence of several of his colleagues; that from that date onwards, the complainant is facing many suspicious situations in the college campus and outside and hence he issued a lawyer's notice dated 6.7.2002 to the accused calling upon him to tender unconditional apology and to pay a sum of Rs.1 lakh to him as damages for having made false, defamatory and derogatory allegations against him with no reply coming from the accused; that the accused told several persons including Dr.J.Antony Pitchai, Reader in English and Mr.N.Madhavan, Lecturer (Selection Grade) in the Political Science Department that "mtiu c';fSf;Fj; bjhpahjh? mth; mtuJ kidtpia tPl;oy; g{l;o itj;J rpj;utij bra;fpwhuhk;/ mth; xU ey;y kdpjd; fpilahJ/@ and hence the complaint before the Court.

4. The trial Court having taken cognizance of the said complaint in C.C.No.9600 of 2002 had issued summons to the accused. At this stage, the accused in the said complaint has come forward to file the above criminal original petition on averments such as that the petitioner is presently absorbed on the payrolls of Tamil Nadu Educational Service as Principal of the premier institution, viz., the Presidency College, Chennai and is discharging his duties as public servant from the date of his employment and more particularly on 19.6.2002 when the alleged occurrence is said to have taken place; that the respondent/complainant is working as selection grade Lecturer in the Department of Economics in Presidency College, Chennai; that the respondent while preferring the private complaint for the allege offence punishable u/s.500 IPC had broadly alleged that he was overlooked by the petitioner in the case of seniority in the departments; that the respondent also refused that the petitioner had permitted one Dr.L.Venkatasamy in preference to the respondent in the matter of seniority; that the above factual situation prompted the respondent to question the same before the petitioner on the date of occurrence, while the petitioner was discharging his official duty as Principal and the respondent, as a matter of fact, admits as having done so accompanied by friends, office bearers and fellow teachers. The petitioner has further stated that a First Information Report is pending against the respondent and that is why the respondent was overlooked in the preference of seniority, which statement has been christened as "defamation in the complaint preferred before the jurisdictional court"; that the respondent has caused legal notice to the petitioner on 6.7.2002, for which, the petitioner gave a reply on 14.12.2002; that an enquiry petition regarding the complaint against the respondent is filed before B-5 Thirumangalam Police Station, Chennai; that under these circumstances, the petitioner seeks to quash the proceedings in C.C.No.9600 of 2002 as extracted supra.

5. During arguments, the learned counsel for the petitioner would cite the following judgments and would read out the relevant portions of the judgments relating to the question of sanction as prescribed under Section 197 of the Cr.P.C.:
1.DOWLATH vs. Mr.DEY, DISTRICT FOREST OFFICER, TIRUPATTUR (1953 MWN Cr. 174)
2.MATAJOG DOBEY & ANOTHER vs. H.C.BHARI (1956 MWN Cr. 57)
3.R.BALAKRISHNA PILLAI vs. STATE OF KERALA AND ANOTHER (AIR 1996 SC 9 01)
4.HAZARI LAL GUPTA vs. RAMESHWAR PRASAD AND OTHERS [1972 MLJ (CRIMINAL)

VOL.XVI 401 (S.C.)]
5.SATISH MEHRA vs. DELHI ADMINISTRATION & ANOTHER [1996 (3) CRIMES 85 (SC)]

6. In the first judgment cited above, it has been held by a learned single Judge of this Court:

"The real test for the applicability of S.197 Cr.P.C. is not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty."

7. In the second judgment cited above, the Honourable Apex Court has held:

"Art.14 of the Constitution does not render S.197 Cr.P.C. ultra vires as the discrimination is based upon a rational classification."

"To require sanction under S.197(1) Cr.P.C., there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

"The test that it must be established that the act complained of was an official act appears unduly to narrow down the scope of the protection afforded by S.197 Cr.P.C."

"The need for sanction is not to be considered s soon as the complaint is lodged and on the allegations therein contained. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

"If in the exercise of the power or the performance of the official duty (a lawful search), improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance."
"Where complaints were filed against persons who conducted a search under a warrant, for offences under Ss.323,342 and 504, Penal Code, held sanction under S.197 Cr.P.C. was necessary for the prosecution."

8. In the third judgment cited above, it has been held that `
sanction under Section 197 Cr.P.C. is required even when such public servant ceases to hold his office on date of taking cognizance of offence.'
9. The fourth judgment cited by the learned counsel for the petitioner reported in 1972 MLJ (Criminal) 401 is regarding the powers of the High Court under Section 561-A (now equivalent to section 482 of the Cr.P.C.). It is held therein:

"In exercising jurisdiction under Section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but

the High Court does not ordinarily enquire as to whether the evidence is `reliable or not'. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be impeding investigation and exercise of jurisdiction of statutory authorities in accordance with the provisions of the Criminal Procedure Code."

10. In the last judgment cited by the learned counsel for the petitioner, the Honourable Apex Court, while considering Sections 227 and 228 Cr.P.C. regarding discharge has held:

"When those two sections are put in juxtaposition with each other, the test to be adopted becomes discernible: is there sufficient ground for proceeding against the accused? It is axiomtic that the standard of proof normally adhered to the final stage is not to be applied at the stage where the scope of consideration is where (sic. whether) there is `sufficient ground for proceeding'."

"The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the cse ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the views that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code."

"But when the Judge is fairly certain that there is no prospect of the case ending in conviction, the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Court sin India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time, it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself."

11. On the contrary, on the part of the respondent, the learned counsel would argue on the merit of the case and would be emphatic that the remarks uttered by the petitioner in the presence of others, particularly co-Professors, were unwarranted and have lowered the dignity of the respondent in the eyes of others particularly his colleagues and hence the

complaint for the offence under Section 500 of the IPC is perfectly justified. Relying on such factual position of the case, the learned counsel would ultimately pray to dismiss the above criminal original petition.

12. In consideration of the facts pleaded, having regard to

the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the respondent herein who is a Professor for 28 long years in Economics, now serving in the Presidency College, Chennai seems to have lodged a private complaint against the petitioner, who is the Principal of the same College for an offence punishable under Section 500 IPC on allegations that the petitioner passed certain imputations against the respondent in the presence of coProfessors and others in the College campus when it came to the question of posting the respondent as the in-charge Head of the Department of the Economics since the Head of Department went on leave and the imputation uttered in Tamil being "mtiu c';fSf;Fj; bjhpahjh? mth; mtuJ kidtpia tPl;oy; g{l;o itj;J rpj;utij bra;fpwhuhk;/ mth; xU ey;y kdpjd; fpilahJ/@

13. Further complaining that the petitioner/accused has been desperately spreading false rumours against the respondent/complainant and his family members with ulterior and sinister motives resulting in feeling of shame and untold mental agony and hardship and that being the Principal of a reputed educational institution, the members of the Staff and the students tend to believe the statements as true by which his status and reputation have been lowered among the staff and students of the College and that such imputations have been made with intent to harm the reputation of the respondent, knowing the same to be false and to harm the reputation of the respondent.
14. During arguments, the learned counsel appearing on behalf of the petitioner/accused would not only deny the petitioner having uttered such imputations much less in the presence of the staff and students but would also plead that such a complaint could not be lodged without prior sanction from the Government as prescribed under Section 19 7 Cr.P.C. since the petitioner is a person of the stature mentioned in the Section i.e. one who cannot be removed from his office save by or with the sanction of the Government and would also submit the judgments of the Supreme Court rendered every now and then in support of his legal claim.

15. In the above circumstances, it is relevant to point that whether it is on facts or regarding the question of law as one raised in the manner aforementioned in favour of the petitioner regarding sanction under Section 197 Cr.P.C., these questions could be raised very well before the Magistrate in whose Court, the subject matter is pending i.e. the XIII Metropolitan Magistrate, Egmore, Chennai, who is competent to entertain such preliminary objections prior to conducting the trial if they are raised before him and therefore it may not be correct on the part of this Court to go into such questions of facts and law and therefore a direction issued to the petitioner to raise such points before the Court below and the Magistrate to consider the same would serve the ends of justice for the present so far as the facts and circumstances and the position of law encircling the whole affair connected to the above criminal original petition is concerned and hence the following order:

In result,
(i)the petitioner shall raise such questions which are to be preliminarily decided such as one raised before this Court regarding sanction under Section

197 Cr.P.C. in the form of preliminary objections within fifteen days from the date on which the copy of this order is made ready.

(ii)The trial Court i.e. the court of XIII Metropolitan Magistrate, Egmore, Chennai shall entertain the application of the petitioner if so filed on the part of the petitioner raising preliminary objections, if it is otherwise in order, and consider the same in the manner required by law and decide those preliminary issues raised regarding the maintainability of the complaint filed by the respondent against the petitioner, prior to settling the other issues

on facts and circumstances and pass orders on merits and in accordance with law within three months from the date of receipt of the preliminary objections from the petitioner with due opportunity for both parties to be heard.

(iii) Since in the meantime, the petitioner's duties as the Principal of the College should not get affected, it has become incumbent on the part of this Court to pass yet another order dispensing with the personal attendance of the petitioner before the Court of XIII Metropolitan Magistrate, Egmore, Chennai, pending disposal of the case in C.C.No.9600 of 2002 unless the lower Court is of the view that on such hearings his personal attendance would be indispensable when the lower Court will be at liberty to summon the petitioner in accordance with the requirements of Section 205 Cr.P.C.

With the above directions, the above criminal original petition is disposed of.

Consequently, Crl.M.P.Nos.169 and 170 of 2003 are closed.

Index: Yes
Internet: Yes
gs/Rao
To
The XIII Metropolitan Magistrate,
Egmore, Chennai.

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